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BEFORE THE HIGH COURT OF JUDICATURE AT BILASPUR

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W.P. NO. 856 /2002

PETITIONER:

R. Sreekantan Nair S/o late G.

Raghvan Pillai, working as Personal

Assistant with Senior Manager(Finance)

National Mineral Development Corpora-

tion Ltd. Kirandul District Dantewada

( Chhattisgarh) .

Versus

RESPONDENTS:

1. National Mineral Development Corpora-

tion Ltd. through its Chairman-Cum-

Managing Director "Khanij Bhavan"

Masab Tank, Hyderabad- 500-028.

General Manager,

National Mineral Development Corpora-

tion Ltd. Kirandul( Chhattisgarh) .

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION  
OF INDIA:



HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO.856 OF 2002

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PETITIONER

R. Sreekantan Nair

Versus

RESPONDENTS

National Mineral Development  
Corporation Ltd. & Another

Post for pronouncement of orders on the 13<sup>th</sup> day of April, 2012

Sd/-  
Satish K. Agnihotri  
Judge



HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO.856 OF 2002

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PETITIONER

R. Sreekantan Nair

Versus

RESPONDENTS

National Mineral Development  
Corporation Ltd. & Another

(Writ Petition under Article 226/227 of the Constitution of India)

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

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Present :- Shri K.R. Nair, Advocate for the petitioner.

Shri Vinod Deshmukh, Advocate for the respondents.

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(Delivered on this 13<sup>th</sup> day of April, 2012)

1. By this petition, the petitioner impugns the legality and validity of the order dated 15-4-2002 (Annexure – P/8) passed by the General Manager, National Mineral Development Corporation Limited (for short “the respondent-NMDC”) whereby the petitioner has been reverted to the lower post of Senior Stenographer Grade – I with a minimum basic pay of Rs.6200/- per month for a period of three years. The petitioner also seeks a direction to the respondent NMDC to make payment of his salary and other consequential benefits.
2. The facts, in brief, as projected by the petitioner, are that initially the petitioner was appointed as Junior Stenographer in the respondent NMDC on 1-11-1977. Thereafter, he was promoted to the posts of Senior Stenographer and Personal Assistant in the years 1983 and 1993, respectively. According to the petitioner in the year 1997 the petitioner applied for housing loan amounting to Rs.2,30,000/-, out of which an amount of Rs.1,40,000/- was sanctioned and the same was divided on installment basis. After receipt of first installment of Rs.28,000/- the petitioner purchased the plot at village Bhirlinga, Near Bastar ITI area.



3. In the month of November, 1997 on account of severe heart attack, <sup>177</sup> the petitioner was admitted in the Project Hospital, NMDC, Kirandul and thereafter shifted to Apollo Hospital, Hyderabad on 10-12-1997 wherefrom he was discharged on 17-12-1997 (Annexure – P/1). Due to the said illness, the petitioner could not complete the house within the stipulated period, however, he completed the construction of house in April, 2000. In spite of the said facts, the respondent NMDC initiated disciplinary proceedings against the petitioner and issued a memo dated 29-12-2000 (Annexure – P/3) calling upon the petitioner to submit his written statement. In response to the same, the petitioner submitted his reply on 8-1-2001 (Annexure – P/4) and requested the respondent NMDC to consider his case sympathetically. Thereafter, the respondent NMDC initiated disciplinary enquiry proceedings against the petitioner and after completion of enquiry, the Enquiry Officer held that the charge leveled against the petitioner was found proved.
4. On the basis of the enquiry report, on 31-12-2001 a show cause notice was issued to the petitioner calling upon him to show cause within seven days from the date of receipt of show cause notice asto why the proposed penalty should not be imposed upon him. In response to the same, the petitioner submitted his reply on 14-1-2002 (Annexure – P/7). Thereafter, the impugned order dated 15-4-2002 (Annexure – P/8) was passed by the respondent-NMDC reverting the petitioner to the lower post of Senior Stenographer Grade – I with a minimum basic pay of Rs.6200/- per month for a period of three years. Thus, this petition.
5. Shri K.R. Nair, learned counsel appearing for the petitioner, would submit that the impugned order is arbitrary, illegal and violative of Article 14 of the Constitution of India. In fact, the petitioner has not committed any misconduct and he has not misappropriated any

money or caused any theft or fraud to the property of the respondent NMDC. Shri Nair would further submit that after recovering from the ailment, the petitioner constructed the house in April, 2000 and the loan installments were also repaid regularly from his salary. During pendency of this petition, the petitioner retired from service on 30-9-2007. Thus, the impugned order may be quashed and the respondent NMDC may be directed to pay CPF and gratuity due and payable to the petitioner including the arrears on wage revision from 1-1-2007 with interest at the rate of 12% per annum from the date it has become due till the date of payment.

6. On the other hand, Shri Deshmukh, learned counsel appearing for the respondent-NMDC, would submit that the petitioner without availing the alternative remedy has straightaway approached this Court, thus, this petition is not maintainable. As per Rule 33 of the NMDC Ltd. Employees (Conduct, Discipline and Appeal) Rules, 1978, an employee can prefer an appeal against the order of penalty imposed. Shri Deshmukh, would further submit that the petitioner obtained the housing loan by giving false and fictitious documents in respect of the progress of construction of house, therefore, a vigilance enquiry was conducted and during the said enquiry the authorities obtained report from the Patwari concerned on 13-12-1999 (Annexure – R/3) whereby the Patwari gave a certificate to the effect that the land where the construction of house is alleged to have been made is lying vacant without any construction and even the said land was not in the name of the petitioner. Shri Deshmukh would next submit that at no point of time, petitioner made any statement before the respondent NMDC that on account of his heart ailment, construction of house was delayed.

7. Shri Deshmukh would, last, submit that on 13<sup>th</sup>/18<sup>th</sup> March, 2000 (Annexure – R/6) the respondent NMDC issued a circular whereby it was called upon from all the employees who were taken housing loan and who have not used the money for construction to refund the said amount in order to escape from any other complications. In spite of said circular, the petitioner did not submit any clarification and even he has not disclosed the fact that he had not started the construction of house, thus, the respondent NMDC was forced to initiate disciplinary proceedings against the petitioner. Thus, the petitioner is not entitled to any relief and the petitioner deserves to be dismissed.
8. I have heard the learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.
9. The finding as recorded and also admitted by the petitioner in respect of the transactions in dispute are first installment of the loan was released on 23-7-1997, second installment on 28-8-1997, third installment on 30-9-1997 and the final installment was released on 23-1-1998. As per the vigilance report, the petitioner started the construction work in February, 2000. The land on which construction was to be made was got registered only on 11-4-2000. The petitioner was paid a sum of Rs.1,40,000/- towards house building advance and the construction could not be initiated and completed in accordance with the norms of housing advance. Accordingly, a charge sheet, as under, was framed against the petitioner and served thereon :

"STATEMENT OF ARTICLE OF CHARGES  
FRAMED AGAINST SHRI R. S. NAIR, P. A.  
T. NO. 16254

Shri R. S. Nair, T. No. 16254 working as P. A. in Bailadila-14 & 11/C had drawn house building advance amounting to Rs.1,40,000/- from NMDC for construction of house on the land P. H. No. 45, Khasra

No. 44, Village : Bhirlinga, Jagdapur against sanction order No. 1 (80)/Rules/HBA/97/1247 dated 19.06.97.

It has been alleged that Shri R. S. Nair has not started the construction of the house out of the advance drawn by him till February 2000.

The above act of Sri R. S. Nair, P. A., T. No. 16254 in so far is not constructing the house within the stipulated period of 18 months after drawing the HBA tantamounts to fraud and dishonesty in connection with Management's business which is a major misconduct under Clause 5(1) of NMDC Employees' CDA Rules 1978 applicable to the employees of NMDC Ltd. which is read as under :

Theft, fraud or dishonesty in connection with the business or property of the Company or Property of another person within the premises of the Company.

Sd/-

Dy. General Manager (Pd.)"

10. As found in the vigilance enquiry report, which was conducted after affording proper opportunity of hearing to the petitioner, Rule 5.11 of the NMDC House Building Advance Rules (for short "the HBA Rules") provides that if an employee availing himself/herself of this scheme and not complying with any or all provisions of the scheme or furnishing wrong or false information or certificate or misusing the facility in any form will be guilty of misconduct and render himself/herself liable to disciplinary action involving major penalties apart from liability to refund the entire amount of the loan outstanding with interest which shall be equivalent to the prevailing Bank lending rate of interest on personal advance plus two and half percent per annum.

11. Rule 5.11 of the HBA Rules reads as under :

"5.11 An employee availing himself/herself of this scheme and not complying with any or all provisions of the scheme or



furnishing wrong or false information or certificate or misusing the facility in any form will be guilty of misconduct and render himself/herself liable to disciplinary action involving major penalties apart from liability to refund the entire amount of the loan outstanding with interest which shall be equivalent to the prevailing Bank lending rate of interest on personal advance plus two and half percent per annum."

12. The other relevant provisions, which are required to be complied with are Rule 4.9 and 5.6 of the HBA Rules, which read as under :

"4.9 Notwithstanding the benefit of repayment of the advance by installment as above, in the event of any default or breach of these rules or the mortgage of security, it shall be open to the company to enforce the security at any time thereafter and recover the balance advance outstanding including interest and costs, other charges, or proceed against the employee in such other manner as is permissible under the law and the entire amount shall, in such a case, become immediately due and payable to the company.

5.6 The employee shall certify, when applying for the installments of the advance admissible at the plinth/roof level that construction is being carried out strictly in accordance with the plan reached plinth/roof level that the amount already drawn has actually been used on the construction of the house. The company, if necessary, may arrange to have an inspection carried out to verify the correctness of the certificates given, at the cost of the employee. Construction of the house should be completed within 18 months of the date on which the first installment of advance is paid to the employee. Failure to do so, will render the employee liable to refund the entire amount advanced to him/her (together with interest therein) in one lumpsum."

13. The petitioner in his deposition before the Vigilance Officer has stated as under :

".....I had started the construction of the house after receipt of all the sanctioned amount of House Building Advance because when I contacted few contractors to construct my building the rate quoted by them was very very higher. It was not at all



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possible to complete the construction work with the sanctioned amount. My son is a Civil Engineer, I thought with his help, I can start the work and complete the building without a break of waiting for another installments. So that economises contractor commission and also to bring the house to the maximum safe level, and also to avoid taking leave frequently. To use the skilled & unskilled labours continuously to work it is necessary to plan for arranging materials & labour & supervisor. As few amounts may help to arrange materials. Then there may be financial problem for labour payment. Stoppage for further installments there were chances of pilferage of materials. To avoid such delays, loss of materials loss of man power, etc. I have managed total money. But after receipt of III installment I got heart attack during the month of October/ November, 1997 hospitalized at kirandul and advised for rest for one month. Then referred me to Hyderabad Apollo Hospital and advised for by pass surgery. Apart from by pass surgery, I took Ayurvedic & Nature treatment and as I was mentally & financially disturbed due to the above reasons, I could not start the above work. But, the money was not misused and there were intention to construct of the works. And also to avoid take leave frequently to do the construction work phase to phase/piecemeal work."

14. On the basis of deposition made by the petitioner before the Vigilance Officer, a charge sheet, as aforestated, was framed and a show cause notice was issued to the petitioner. The petitioner submitted his reply in detail explaining his conduct where he has not denied the fact of not starting the construction of house and also not submitting the progress of the construction work, as required under Rule 5.6 of the HBA Rules.
15. The enquiry officer, on the basis of abovestated facts, submitted the enquiry report holding the charge as proved against the petitioner. Second show cause notice was issued on 31-12-2001/6-1-2002 (Annexure – P/6) asto why the petitioner be not removed from service, which shall not be a disqualification for future employment. The petitioner submitted his response on

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14-1-2002 (Annexure – P/7) praying that his case may be considered sympathetically.

16. On consideration of the case of the petitioner, the impugned order dated 15-4-2002 (Annexure – P/8) was passed, imposing punishment of reduction to the lower post of Senior Stenographer Grade I in Rs-10 scale of with a minimum basis pay of Rs.6,200/- per month for a period of three years with effect from the date of issue of the order.
17. The petitioner has placed reliance upon the decision of the Supreme Court in *Kuldeep Singh v. Commissioner of Police and Others*<sup>1</sup>. In which the Supreme Court has held that the Court cannot sit in appeal over those findings and assume the role of the appellate authority. However, the power of judicial review is available when the finding is perverse, if not based on any sufficient finding. In the case on hand, the finding is fully supported by the finding of the Vigilance Officer, which supported by facts, documents and the same are admitted by the petitioner and even the facts are also admitted.
18. The Vigilance Officer has conducted full pledged enquiry after affording full opportunity of hearing to the petitioner wherein in his reply the petitioner has admitted the allegations leveled against him and thereafter, in response to the charge also the petitioner has not attacked the findings of Vigilance Officer. Thus, it cannot be held that the allegation was found proved without materials on record.
19. The decision of the Supreme Court rendered in *State of U.P. and Ors. V. Saroj Kumar Sinha*<sup>2</sup>, relied on by the petitioner, is not applicable to the facts of the present case.

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<sup>1</sup> (1999) 2 SCC 10

<sup>2</sup> AIR 2010 SC 3131

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20. On perusal of the entire documents, in the light of submissions made by the learned counsel appearing for the parties, it is evident that the petitioner was not honest in submitting the progress report and obtaining housing loan in four installments. The petitioner ought to have begun the construction work on receiving the first installment of loan. Even if there was some difficulty, as explained that he was suffering from heart problem, an information could have been sent to the employer for delay of construction on account of unavoidable situation. The same was not done.
21. It appears that the employer has considered the case of the petitioner sympathetically, as in the second show cause notice proposing punishment was for removal from service, which after receiving the reply of the petitioner was modified to the extent of reduction in lower pay scale. Thus, the decision of the respondent NMDC cannot be flawed.
22. Since the impugned order was stayed by this Court on 7-5-2002 and according to the petitioner, the same is continuing, the petitioner, it appear, was paid his original salary and the reduction of pay scale could not be given effect to. If it is so, there shall not be any recovery of the amount paid to the petitioner.
23. The petitioner has retired from his service on 30-9-2007 on attaining the age of superannuation, no further action is necessary. The respondent NMDC is directed to consider the case of the petitioner with respect to retrial benefits including CPF, gratuity, etc., in accordance with law, and make payment of the same accordingly, as expeditiously as possible.
24. With the aforesaid observations, the writ petition stands disposed of. No order asto costs.

Gowri

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Sd/-  
Satish K. Agnihotri  
Judge

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